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DISPATCH

Federal Communications Commission

FCC 99-148

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Annual Assessment of the Status of)	CS Docket No. 99-230
Competition in Markets for the)	
Delivery of Video Programming)	

NOTICE OF INQUIRY

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By the Commission:

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I. INTRODUCTION

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming.¹ This *Notice of Inquiry* ("Notice") is designed to assist us in gathering the information, data, and comment for the sixth report on competition in markets for the delivery of video programming ("1999 Competition Report"). In this report, the Commission expects to update our assessment of the status of competition and report on changes in the competitive environment since our *1998 Competition Report* was submitted to Congress.² We also note that the information gathered in this report will present the first comprehensive picture of the state of competition in the video marketplace following the deregulation of rates for cable programming service tiers ("CPSTs") on March 31, 1999.³

2. Commenters are invited to submit information and analysis regarding competition in markets for the delivery of video programming. We will use comments submitted in this proceeding in conjunction with information from publicly available sources and filings in other Commission proceedings for the 1999 Competition Report. We seek data, information, and comment on the cable industry, existing and potential competitors in markets for the delivery of video programming, and the prospects for increasing competition in these markets. We are interested in analyzing competition in markets for delivery of video programming and assessing choices available to consumers with respect to video service offerings. We request comment regarding changes in these markets over the past year and fact-based projections for the future development of competition in these markets. To compare information with that provided in last year's report, for this year's report, we would like to present data as of June 30, 1999, and ask parties, to the extent feasible, to submit data and information that are current as of that date. Commenters also are invited to discuss the role of existing statutory provisions and Commission regulations in promoting or inhibiting competition in markets for the delivery of video programming. Commenters also may provide any other information or analysis they deem relevant for this report.

¹Communications Act of 1934, as amended ("Communications Act") § 628(g), 47 U.S.C. § 548(g).

²*Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 98-102, Fifth Annual Report, 13 FCC Rcd 24284 (1998) ("1998 Competition Report"). Earlier reports in compliance with this statutory requirement were issued in 1994, 1995, 1996, and 1997. See *Implementation of Section 19 of the 1992 Cable Act (Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming)*, CS Docket No. 94-48, First Report, 9 FCC Rcd 7442 (1994) ("1994 Competition Report"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 95-61, Second Annual Report, 11 FCC Rcd 2060 (1996) ("1995 Competition Report") and *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 96-133, Third Annual Report, 12 FCC Rcd 4358 (1997) ("1996 Competition Report"); *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CS Docket No. 97-141, Fourth Annual Report, 13 FCC Rcd 1034 (1998) ("1997 Competition Report").

³47 U.S.C. § 543(c)(3), (c)(4).

II. MATTERS ON WHICH COMMENT IS REQUESTED

A. The Availability of Competitive Choices for Consumers

3. Markets for the delivery of video programming are served by video distributors using both wired and wireless technologies. Video distributors include multichannel video programming distributors ("MVPDs"), such as cable systems, direct broadcast satellite ("DBS") service, and home satellite dish ("HSD") service, private cable or satellite master antenna television ("SMATV") systems, open video systems ("OVS"), multichannel multipoint distribution service ("MMDS"), and instructional television fixed service ("ITFS"), as well as over-the-air broadcast television service.⁴

4. Congress and the Commission have sought to eliminate barriers to competitive entry and establish market conditions that promote competition to foster more and better options for consumers at reasonable prices. Beginning with the 1992 Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"),⁵ Congress removed several barriers to competition.⁶ At that time, Congress also established rate regulation in the absence of "effective competition," although Congress expressed a clear preference to allow competition rather than rate regulation as the mechanism for keeping cable rates reasonable.⁷ The Telecommunications Act of 1996 ("1996 Act") was intended to extend the pro-competitive provisions of the 1992 Act and to establish a "pro-competitive de-regulatory national policy framework" for the telecommunications industry.⁸ In addition, in the 1996 Act, Congress established a sunset for CPST rate regulation on March 31, 1999.⁹

5. In the *1998 Competition Report*, the Commission found that incumbent cable systems remain dominant in the market for delivery of video programming with an 85% share of all MVPD

⁴In earlier reports, we included local multipoint distribution service ("LMDS") and interactive video and data services ("IVDS") among technologies for the delivery of video programming. However, as noted in the *1998 Competition Report*, it appears that LMDS and IVDS will not be used for video services. *1998 Competition Report*, fn. 6, ¶ 87.

⁵Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁶The 1992 legislation was intended "to encourage competition from alternative and new technologies, including competing cable systems, wireless cable, direct broadcast satellites, and satellite master antenna systems." House Committee on Energy and Commerce, H.R. Rep. No. 628, 102d Cong., 2d Sess. (1992) at 27. See also Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 92, 102d Cong. 1st Sess. (1991) at 18. To accomplish this goal, the 1992 Act *inter alia* prohibited exclusive franchises and established program access, channel occupancy, and program carriage rules.

⁷"It [Section 623(a)] expresses a preference for competition and that the rates for cable service shall not be subject to regulation if the cable system is subject to effective competition." House Committee on Energy and Commerce, H.R. Rep. No. 862, 102d Cong., 2d Sess. (1992) at 60.

⁸Pub. L. No. 104-104, 110 Stat. 56 (1996). See also H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 1 (1996).

⁹47 U.S.C. § 543(c)(3), (c)(4).

subscribers, although their share continues to decline.¹⁰ For the 1999 Competition Report, we seek information and comment that will allow us to evaluate the status of competition in the video marketplace, its effect on the cable television industry, and prospects for increased competition. We are interested in evaluating the extent that consumers have choices among video programming distributors and delivery technologies and comparing the various video distribution alternatives available to consumers. In particular, we seek data that will allow us to compare the alternatives available to consumers in terms of video programming offerings, prices for programming services and associated equipment, and other services provided (e.g., telephony, data access). We invite comment on the effect of recent statutory and regulatory changes on competition for the delivery of video services. We request information regarding existing or potential regulatory impediments that may deter entry or prevent expansion of competitive opportunities in video program delivery markets. We also ask commenters to identify specific Commission rules, policies, or regulations that ought to be reexamined in light of current competitive opportunities within multichannel video programming markets.

6. In recent *Competition Reports*, we presented several case studies of local markets where cable operators faced actual competition from MVPD entrants.¹¹ This year, we request information on the effects of actual and potential competition in these and other local markets where consumers have, or soon will have, a choice among MVPDs. In particular, we seek updated information on MVPD services in those areas included in our previous case studies to determine whether the initial effects of competition continue. We also ask commenters to provide specific data regarding other areas where head-to-head competition exists, or is expected to exist in the near future, between cable and other MVPDs, or among various types of MVPDs. How has such competition affected prices, service offerings, quality of service, and other relevant factors? What regulatory changes have facilitated head-to-head competition in local markets between or among MVPDs? What barriers still exist which inhibit further competition?

7. In addition to analyzing select case studies, in the 1999 Competition Report, we want to present a broader picture of the current state of competition on a local, regional, and national basis. We ask commenting parties to provide information that will assist us in this assessment of competitive alternatives available to consumers. We seek detailed information on the types of competitive alternatives, comparisons of the services offered, both video and nonvideo, and the prices charged for these service and associated equipment. We are interested in information regarding the existence and extent of competitive alternatives by locality, television market (i.e., by designated market area or "DMA"), geographic region, and nationwide. We ask commenters to provide information on the number of consumers having choices and a description of the available choices. For example, we want to update our information on the status of competition from overbuilds, from both local exchange carrier ("LEC") and non-LEC operators, and request data on the number and location of overbuilt markets, including maps and other information regarding the overlapping coverage areas of competing services. How many television households have a choice between cable systems or between an incumbent cable system and an open video system? How many households can choose between an incumbent cable operator and a wireless technology? We recognize that DBS passes every home in the continental U.S., although not all homes can receive this service. How many homes can choose between DBS and an incumbent cable operator or other MVPD?

¹⁰1998 *Competition Report*, 13 FCC Rcd at 24287, 24418-24420 ¶ 6, Appendix C, Table C-1.

¹¹1998 *Competition Report*, 13 FCC Rcd at 24395-24404 ¶¶ 208-231; 1997 *Competition Report*, 13 FCC Rcd at 1130-40 ¶¶ 178-210; 1996 *Competition Report*, 12 FCC Rcd at 4452-62 ¶¶ 201-33. In each of these cases the Commission determined that the statutory conditions for "effective competition" were met.

To what extent can consumers choose between two, three, four, or more video programming distribution services? For each area where consumer choice exists, we seek information on: (a) the identity of the competitors; (b) the distribution technology used by each competitor; (c) the date that each competitor entered the market; (d) the location of the market, including whether it is predominantly urban or rural; (e) an estimate of the subscribership and market share for the services of each competitor; (f) a description of the service offerings of each competitor; (g) differentiation strategies each competitor is pursuing; and (h) the prices charged for the service offerings. Moreover, we seek comment on the actual or announced consolidation of cable companies and the consolidation of DBS companies. What effect are these marketplace consolidations having on consumer choice and the prices charged for video programming services? We also request comment on the effect of the reported decision of several wireless companies to offer DBS service rather than their own video programming on consumer choice in terms of program offerings and price.¹²

8. In the 1997 and 1998 *Competition Reports*, we considered multiple dwelling units ("MDUs") a separate submarket.¹³ For the 1999 *Competition Report*, we would like to update our information on video delivery competition for and within MDUs. How common is it for consumers to have choices among MVPD services within a particular MDU? What factors influence MDU competition? How do the program offerings and prices charged by competing MVPDs serving an MDU compare? How do the program offerings and prices charged by MVPDs serving MDUs compare with those of competing MVPDs serving the same geographic area? How comparable are the program offerings and prices charged by MVPDs serving both MDUs and non-MDU customers in the surrounding area? Are MVPDs commonly providing multiple services (i.e., video and nonvideo services) to MDU customers? If so, what services are being provided, and in what geographic locations are the multiple services offered? Is the use of exclusive video service contracts in MDUs increasing or decreasing? To what extent do MVPDs have exclusive service contracts with MDU owners and how many are so-called "perpetual" exclusive contracts? What impact do the inside wiring,¹⁴ over-the-air reception device ("OTARD"),¹⁵ and cable bulk rate¹⁶ rules have on MDU competition? Are there factors unique to the MDU market that have consequences for regulatory policy?

¹²See, e.g. 'Dependent' on DirecTV, Heartland Wireless and Wireless One Dropping Video Focus, Communications Daily, March 22, 1999, at 1.

¹³1997 *Competition Report*, 13 FCC Rcd at 1109-1114 ¶¶ 129-139; 1998 *Competition Report*, 13 FCC Rcd at 24363-24370 ¶¶ 129-143.

¹⁴See *Telecommunications Services Inside Wiring, Customer Premises Equipment*, CS Docket No. 95-184; *Cable Home Wiring*, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 3659 (1998).

¹⁵*Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, CS Docket No. 96-83, Second Report and Order, 13 FCC Rcd 23874 (1998).

¹⁶1996 Act § 301(b)(2), 47 U.S.C. § 543(d).

B. Competitors in Markets For the Delivery of Video Programming

9. As in previous reports, we seek factual information and statistical data about the status of video programming distributors using different technologies, and changes that have occurred in the past year.¹⁷ For each video programming distribution technology, we seek information by company, by geographic market served, and on an aggregate industry basis. In particular, we request data on the following: (a) the number of homes passed (for wired technologies) and the number of homes capable of receiving service (for wireless technologies);¹⁸ (b) the number of operators; (c) the identities of the ten largest operators (national market only); (d) the number of subscribers and penetration rates;¹⁹ (e) channel capacities and the number and types of channels offered; and (f) the number and types of services offered. In addition, we request financial information for each technology, including firm and industry revenues, in the aggregate and by sources (e.g., subscriber revenues, advertising revenues, programming revenues); cash flow; changes in stock prices; investments; capital acquisition; and capital expenditures.

10. For each video programming distribution technology, we also request information describing: (a) technological advances (e.g., deployment of digital services) that make or may make the technology competitive; (b) the effort (including steps, costs, and time) needed to increase the number of homes passed or capable of receiving service; (c) the effort (including steps, costs, and time) needed to increase the number of channels and types of services offered; and (d) regulatory and judicial developments that affect the use of different technologies. We also seek information about investments in two-way capability by distribution technology and by individual companies. In addition, in evaluating the extent of competition among various MVPDs' services or technologies, we seek information and analysis on the degree to which viewers or consumers consider the different types of MVPDs to be substitutes, even though the individual MVPDs and types of MVPDs differ in terms of service offerings and prices. In particular, we request any information available on the extent to which customers have switched from one provider or technology to another one, and information concerning what factors were responsible for the switching, such as relative prices, service offerings, availability or lack of "favorite" programming, technical problems, ease of use, or special features available with a specific technology.

11. We also request the following additional information for specific types of video distributors or distribution technologies:

(a) Cable Television. In our *1998 Competition Report*, we observed that cable rates rose faster than inflation.²⁰ We further noted that a portion of these rate increases is attributable to capital expenditures for the upgrading of cable facilities, an increased number of video and nonvideo services offered, and increased programming expenditures. Moreover, as part of last year's report,

¹⁷See *Competition Reports*, 1994-1998, *supra* note 2.

¹⁸This includes the number of line-of-sight homes for distribution technologies that require line-of-sight for reception.

¹⁹To the extent available, we also seek information on the numbers of subscribers to different levels of service (e.g., basic, cable programming service or "CPS," premium, pay-per-view, near video-on-demand, etc.).

²⁰*1998 Competition Report*, 13 FCC Rcd at 24288, 24311 ¶¶ 9, 47.

we included the results of an inquiry concerning cable television programming costs.²¹ For this year's report, we request information and comment on changes in cable rates, especially following the sunset of CPST rate regulation on March 31, 1999. We ask for information regarding the magnitude of rate changes and the factors that have caused the changes in rates. Are such changes attributable to investments made for facilities upgrades that provide increased channel capacity, permit the development of digital service tiers, or allow cable operators to offer nonvideo services (e.g., telephony, data)? To what extent are the changes in rates attributable to increases in programming costs? Are these increases due to a rise in licensing fees, an increase in the number of programming services offered, or a combination of both? What role do other factors play (e.g., increased labor costs, general inflation) in changes in cable service rates? Does the existence of, or the potential entry of, competitive alternatives have a constraining pressure on cable rates?

In the last few years, cable operators have made substantial investments to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services.²² We seek information on the capital investments of the cable industry and whether they are continuing at the same pace as in recent years. How much are particular companies and the industry as a whole investing in upgrading facilities and equipment? Are these upgrades intended to increase channel capacity, convert to digital technology, or establish facilities capable of providing advanced services (e.g., data access, telephony)? Does the cable industry expect an increase in revenue this year from these capital expenditures? If not, when does the cable industry expect to see a significant return on its investments? We also solicit data on the availability of advanced broadband services. Moreover, we are interested in what role, if any, the ability to provide advanced broadband services plays in attracting subscribers to video programming services and contributing to the competitiveness of a cable operator or other MVPD. We further request information on the number of subscribers that have access to upgraded services and the number of subscribers actually receiving the increased offerings and advanced services available as a result of system upgrades.

With respect to cable prices, we also request information on the extent to which cable operators are offering bulk discounts to subscribers in MDUs. Are such discounts offered only when operators face direct competition in a specific MDU or do cable operators offer such discounts generally? Are bulk discounts used in response to competition or do they reflect the increased efficiency and decreased cost of offering service to multiple homes in one building? What other

²¹*Id.* at 24457-24480 Appendix F.

²²Section 706 (b) of the 1996 Act defines "advanced telecommunications capability" as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." 47 U.S.C. § 157 nt. In its *Report on Advanced Telecommunications Capability* issued pursuant to Section 706, the Commission defined "broadband" as having the capability of supporting, in both the provider-to-consumer (downstream) and the consumer-to-provider (upstream) directions, a speed (in technical terms, "bandwidth") in excess of 200 kilobits per second (kbps) in the last mile. See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, 14 FCC Rcd 2398, 2406 (1999) ¶ 20.

types of discounts do cable operators offer (e.g., senior citizen discounts) and how do they differ from the general residential subscriber rate?

We also seek comment on how programming services are being packaged for consumers. Are cable operators restructuring their programming tiers now that CPST rate regulation has sunset? If so, to what extent, are operators shifting programming from the basic service tier ("BST") to the CPST and creating smaller basic tiers (i.e., "lifeline" tiers)? To what extent, are operators shifting services to create uniform program offerings across their regional or clustered systems? We seek comment on the economic, competitive, legal, and technical considerations that go into creating such tiers of programming services. We are interested in information on whether, and if so how, cable operators are restructuring their programming packages and tiers of service as a result of actual or potential competition. We also seek comment on whether, and to what extent, these efforts are intended to differentiate cable service from that of competing video services.

Most of the readily available information regarding cable service offerings and deployment of new technologies is limited to the activities of major multiple system operators ("MSOs"). Yet, we understand that other MSOs also are upgrading their cable systems or entering into agreements that allow them to provide advanced services (e.g., digital programming, data access). We, therefore, seek information on the service and technology deployment activities of medium and small cable firms. To what extent do medium and small MSOs offer services in addition to video programming to their subscribers? What factors influence the ability of smaller firms to upgrade technologically? Are smaller firms implementing digital technologies or are they planning to deploy digital technologies in the foreseeable future?

(b) Direct-to-Home Satellite Services. We seek updated information about direct-to-home ("DTH") satellite services, which includes direct broadcast satellite ("DBS") and home satellite dish ("HSD") services.²³ In the *1998 Competition Report*, we observed the continued growth of DBS subscribership and its effect on the increase on the proportion of MVPD subscribers choosing noncable alternatives.²⁴ We also noted that over the previous year the number of HSD subscribers has been declining.²⁵ Moreover, last year we reported that much of the increase in the number of noncable MVPD households was attributable to the growth of DBS, which was attracting former cable subscribers and consumers not previously subscribing to an MVPD.²⁶ Are these trends continuing? With respect to the number of DBS and HSD subscribers and penetration levels, we request data on the geographic locations of DBS and HSD subscribers. Has DBS penetration and subscribership increased in MDUs as a result of our OTARD decisions,

²³DTH services use satellites to deliver video programming directly to subscribers. HSD users employ relatively large dishes (4-8 foot) to receive programming. DBS uses relatively small receiving dishes. For our reports, we include high power satellite services that use 18-24 inch dishes and medium power satellites services that use 36-40 inch dishes in our definition of DBS. See, e.g., *1995 Competition Report*, 11 FCC Rcd at 2080-2084 ¶¶ 48-52; *1998 Competition Report* 13 FCC Rcd 24323 ¶ 61.

²⁴*1998 Competition Report*, 13 FCC Rcd at 24287-24288 ¶ 7.

²⁵*Id.* at 24287-24288, 24335-24336 ¶¶ 7, 80.

²⁶*Id.* at 24287-24288 ¶ 7.

particularly the most recent one allowing the placement of satellite dishes on exclusive use areas such as balconies and patios?²⁷ Are there identifiable differences between consumers who choose to subscribe to DBS rather than cable or another MVPD? We note that the ability of DTH services to provide broadcast television programming is limited under copyright law.²⁸ What impact does this statutory constraint have on the ability of DBS to provide a service that competes with, and to be viewed as a substitute for, incumbent cable systems? Do consumers continue to subscribe to cable service along with DTH satellite services, especially DBS, in order to receive local broadcast service? How many and what proportion of DTH households also subscribe to cable? To what extent is the DBS industry developing antennas to facilitate the reception of over-the-air broadcast transmissions by their subscribers or providing their subscribers with broadcast reception capability as part of their service?²⁹ Have the recent court decisions³⁰ and Commission actions³¹ regarding the delivery of distant network signals to households in "unserved" areas had any effect on the subscribership of DBS?

(c) Wireless Cable Service. In the 1998 *Competition Report*, we showed a decline in subscribership to wireless cable ("MMDS") systems.³² Is this trend continuing? There have been several announcements by MMDS operators recently that they plan to abandon video service and use their frequencies for a variety of telecommunications services. Other MMDS operators have announced plans to abandon their own video services and to market DBS service. What effect will these actions have on the status of competition and the choices available to consumers in the video marketplace? In addition, recently there have been several announcements of planned investments in wireless companies by other communications firms (e.g., long distance telephone companies). We request comment on the potential effect of these actions on competition.

(d) Satellite Master Antenna Systems. SMATV systems, also known as private cable systems, primarily serve MDUs. Publicly available information on SMATV systems is limited due to the nature of their operations. Therefore, we ask commenters to provide detailed information

²⁷*Restrictions on Over-the-Air Reception Devices: Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite Services*, CS Docket No. 96-83, Second Report and Order, 13 FCC Rcd 23874 (1998).

²⁸17 U.S.C. § 119.

²⁹1997 *Competition Report*, 13 FCC Rcd at 1072-73 ¶ 58.

³⁰See *CBS, Inc. et al. v. PrimeTime 24, Joint Venture*, Order Affirming in Part and Reversing in Part Magistrate Judge Johnson's Report and Recommendations, 9 F.Supp.2d 1333 (S.D. FL., May 13, 1998); *CBS, Inc. et al. v. PrimeTime 24, Joint Venture*, Supplemental Order Granting Plaintiffs' Motion for Preliminary Injunction, Case No. 96-3650-CIV (S.D. FL., July 10, 1998); *CBS, Inc. et al. v. PrimeTime 24, Joint Venture*, Findings of Fact and Conclusions of Law, Case No. 96-3650-CIV-NESBITT (S.D. FL., December 23, 1998); *CBS, Inc. et al. v. PrimeTime 24, Joint Venture*, Final Judgment and Permanent Injunction, Case No. 96-3650-CIV-NESBITT (S.D. FL., December 30, 1998). See also *ABC, Inc. v. PrimeTime 24, Joint Venture*, 17 F.Supp.2d 467 (M.D. N.C., July 16, 1998); *ABC, Inc. v. PrimeTime 24, Joint Venture*, 17 F.Supp.2d 478 (M.D. N.C., August 19, 1998).

³¹*Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act, Part 73 Definition of Grade B Intensity*, CS Docket No. 98-201, 14 FCC Rcd 2654 (1999).

³²1998 *Competition Report*, 13 FCC Rcd at 24287-24288, 24336-24337 ¶¶ 7, 83.

regarding SMATV services. We would like to identify the largest SMATV operators and the geographic areas they serve. In which markets do SMATV providers have the highest penetration and numbers of subscribers? What types of video and other services do SMATV providers offer their customers? How do prices compare to those of incumbent cable operators? Have alliances between SMATV providers and DBS operators grown over the last year? Are there services that SMATV operators provide their subscribers that cable, DBS, and other technologies do not?

(e) Open Video Systems. Congress established open video systems as one means for local exchange carriers ("LECs") and others to enter the video marketplace. We request information on the operation of open video systems by LEC and other entities, including the number of homes passed, the number of subscribers, and the types of video and nonvideo services being offered on OVS systems. To what extent are open video systems joint ventures between video service providers and other entities (e.g., utility companies, Internet service providers) and what are the arrangements among the participants in such ventures? An OVS operator must make channel capacity available for use by unaffiliated programmers. Are unaffiliated programmers seeking carriage on open video systems? How many unaffiliated programmers have sought carriage under this provision and what types of programming are being offered in this manner? Under the *City of Dallas, Texas v. FCC* decision,³³ local governments have the ability, although not the obligation, to impose franchise requirements on OVS operators. What types of agreements do OVS operators have with local government bodies? What types of provisions do such agreements include (e.g., the payment of franchise fees, establishment of institutional networks)? What effect will the *City of Dallas, Texas v. FCC* decision regarding OVS and franchises have on the growth of OVS? Will video providers switch from the OVS model to the traditional cable model in light of this decision?

(f) Broadcast Television. We seek information on the role of broadcast television in markets for the delivery of multichannel video programming. We request information regarding the extent to which broadcast television competes as a distribution medium with MVPDs for audiences or for advertising revenue. We also seek information on technological, copyright, competitive, and other issues associated with the distribution of local broadcast signals by video programming distributors, including those not currently subject to broadcast television signal carriage requirements. In the last year, broadcast television stations have started to convert to digital television ("DTV"). We ask commenters to provide information on the current status of DTV operations, the construction of digital television transmission facilities, and other aspects of the implementation of digital television service that may be useful for preparation of the 1999 Competition Report.³⁴ In particular, we request information regarding the amount and type of programming being offered on digital channels, including the extent to which DTV channels are being used for high definition television ("HDTV") and the extent to which they are being used for multichannel program offerings. In addition, as the transition to DTV broadcasting progresses, we also seek information on issues affecting DTV consumer equipment such as DTV receivers, DTV-ready cable set-top boxes, and other new devices. In particular, we request information relating to sales of currently available DTV consumer equipment, the status of industry efforts to

³³*City of Dallas, Texas v. FCC*, Case No. 96-60502, 165 F.3d 341 (5th Cir. January 19, 1999).

³⁴To the extent this information is already on file with the Commission, commenters should cross-reference other submissions.

create DTV-cable compatibility standards, and other factors affecting consumer adoption of DTV equipment.

(g) Home Video. In 1990, the Commission concluded that home video provides competition to cable television, at least with respect to the premium and pay-per-view programming services.³⁵ Subsequently, we have reported on developments in the home video marketplace in our annual reports. We seek information regarding developments in home video, including the availability of the recently introduced digital video disk ("DVD") technology. We also seek comment on whether the availability of home video rentals and sales should be considered competition in markets for the delivery of video programming given changes in the MVPD marketplace in the intervening years.

(h) Internet Video. In the *1998 Competition Report*, we noted that investment and development of Internet video services was continuing, although video programming offered by Internet video still remained less than broadcast quality.³⁶ We request information on technological developments affecting the provision of video services over the Internet. We want to update our information on the types of video offerings and services available over the Internet. We also request comment on whether there have been any changes over the last year that would alter the assessment that Internet video is not a direct competitor to traditional video services at this time.³⁷ What are those changes and how do they affect MVPD competition?

12. The 1996 Act increased opportunities for firms not traditionally associated with the provision of video services to enter into the video marketplace. For example, the 1996 Act had several provisions intended to foster LEC entry into video service. It delineated four options for LEC provision of video services: OVS; common carriage; radio communications; and cable.³⁸ The 1996 Act also repealed the statutory prohibition against an entity holding attributable interests in a cable system and a LEC with overlapping service areas.³⁹ In addition, Section 103 of the 1996 Act removed a significant regulatory barrier to the entry of registered public utility holding companies into telecommunications, information services, and video markets by eliminating "line of business" restrictions on such companies.⁴⁰

³⁵*Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, MM Docket No. 89-600, Report, 5 FCC Rcd 4962, 5019-20, ¶¶ 109-110 (1990).

³⁶*1998 Competition Report*, 13 FCC Rcd at 24348-24350 ¶¶ 102-105.

³⁷*Id.* at 24350 ¶ 105.

³⁸*See* Communications Act § 651(a), 47 U.S.C. § 571(a).

³⁹*See* Communications Act § 652(d), 47 U.S.C. § 572(d). Under the statute, there are no restrictions on LECs establishing new cable systems. However, Section 652(a) of the Communications Act prohibits LECs or their affiliates from acquiring directly or indirectly more than a 10% financial interest, or management interest, in any cable operator within its telephone service area. *See* Communications Act § 652(a), 47 U.S.C. § 572(a).

⁴⁰*1996 Competition Report*, 12 FCC Rcd at 4410-4411 ¶ 95.

13. For the 1999 Competition Report, we request information regarding the types of entities and companies that now provide video services or plan to provide video services in the near future. In particular, we are interested in LECs, long distance telephone companies, and utility company activities. What types of video and nonvideo services are such companies providing? What delivery technologies are being used? Is the entity providing video services as part of a joint venture?

14. Specifically, with respect to LEC plans for video distribution, we request information about the current status of their activities and any changes that have occurred since the *1998 Competition Report*. We seek updated information on franchised cable systems operated by LECs, both within their telephone services areas and outside those regions. To what extent are these LEC cable systems overbuilds of incumbent cable systems' service areas? We note that several LECs, such as Bell Atlantic and SBC, have recently announced marketing and distribution agreements with DirecTV. We request information regarding these agreements and other similar arrangements between LECs and other video distributors, including the services offered and costs. Are video programming services being bundled with telephone and other services? If so, how does the ability to offer bundled services affect the relative competitive position of the LEC?

15. The repeal of the statutory prohibition against LECs providing video services in their telephone service areas was expected to result in LECs competing in video delivery markets, and cable operators providing local telephone services. In the *1998 Competition Report*, we found that the technological convergence that would permit the use of telephone facilities for the provision of video services has not yet occurred.⁴¹ Previously, we noted that the one area where cable operators and telephone companies have started to compete is in the provision of Internet access.⁴² We also observed that other video programming distributors, such as wireless cable and private cable operators using MMDS and SMATV technologies, are providing access to the Internet.⁴³ We seek information, by distribution technology and firm, concerning the provision of multiple services in local, regional, and national geographic markets. For each entity providing services in addition to video services, we seek a description of the video and nonvideo services provided, information on whether the multiple services are provided using, in whole or in part, the same equipment or facilities, and the number of homes passed by, and subscribers to each service as of June 30, 1999.

C. Market Structure and Conditions Affecting Competition

1. Industry and Market Structure

16. As in previous reports, the 1999 Competition Report will provide updated information on the structure of, and rivalry in, markets for the delivery of video programming. We also intend to evaluate MVPD market concentration as we have done previously and, thus, seek data regarding current national subscribership levels of all MVPDs, whether these levels have changed since the 1998

⁴¹1998 *Competition Report*, 13 FCC Rcd at 24288 ¶ 10.

⁴²*Id.* at 24313-24319, 24356 ¶¶ 52-57, 114.

⁴³*Id.* at 24338, 24342 ¶¶ 85, 92.

Competition Report, and, if so, how significantly.⁴⁴ We further request information regarding the reach or homes passed by each MVPD. We ask commenters to indicate the basis for the numbers provided, especially whether they represent only the number of subscribers or homes passed directly by the MVPD or whether the reported figures include the number of subscribers or homes passed through investments in or affiliations with other MVPDs using the same delivery technology. To the extent national concentration has increased or decreased for specific MVPDs, we ask commenters to discuss the reasons for such changes, including whether such changes are the result of merger and acquisition activity, marketing strategies, or other factors. We also would like to evaluate MVPD service providers in the larger communications marketplace. For this assessment, we solicit data and information that will show how broadcast television, cable television, telephone, satellite, equipment suppliers and other participants compare in terms of relative size and resources (e.g., revenues) and indicate the extent to which participants have the ability to enter each others' market.

17. We expect to report on cable industry transactions, including information on mergers, acquisitions, consolidations, swaps and trades, cross-ownership, and other structural developments that affect distributors' delivery of video programming. We seek updates on the status of the mergers and transactions that were described in the *1998 Competition Report* as pending or proposed but not consummated. We note that over the last year there have been several large transactions that have resulted, or will result once consummated, in the growth of certain MSOs. We request information regarding these transactions, including the number of homes passed and the number of subscribers served and their geographic location. We request comment on the effect of such consolidations within the cable industry and on MVPD competition. We further request information regarding transactions involving noncable MVPDs that might affect competition in the video marketplace.

18. With respect to regional concentration (i.e., "clustering"), for cable and other MVPDs, we seek information on the geographic areas served by particular companies. What effects have cable industry consolidation and clustering had on competition? We seek specific, detailed information on transactions involving system acquisitions and trades for each distribution technology and the "geography" of the major companies in each technology. Lower fixed costs and the ability to provide service more efficiently are considered advantages of clustering. Has clustering facilitated cable operators' ability to provide increased or improved services, such as additional video or nonvideo services, lower prices, or better customer service? Have consumers benefitted from the clustering of cable systems? If so, how?

19. We also are interested in learning whether MVPDs other than cable operators cluster their systems? If so, we seek to identify the companies that have decided to cluster their systems, the delivery technology used, the number of homes passed in each service area or cluster, and the number of subscribers. We also request information regarding the effect clustering in such cases has had on the video and nonvideo services offered to consumers and the effect on the prices charged for such services?

⁴⁴The Commission also sought information regarding national ownership levels in *Implementation of Section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992: Horizontal Ownership Limits*, MM Docket No. 92-264, Memorandum Opinion and Order on Reconsideration and Further Notice of Proposed Rulemaking, 13 FCC Rcd 14462 (1998).

2. *Programming Issues*

20. In the 1999 Competition Report, we will update our information on existing and planned programming services, with particular focus on those programming services that are affiliated with video programming distributors. As in previous reports, we plan to identify national programming services and assess the extent to which video programming services are affiliated with cable MSOs. In order to examine trends in the ownership of programming services, we seek information detailing each MSO's ownership interests in video programming services, including the amount and type of interest held by each MSO, the date such interest was acquired, and any changes since last year. We also request updated figures for the number of subscribers or nationwide share of subscribers for: (a) independent programming networks; (b) national programming networks distributed by cable systems; (c) national programming networks distributed by noncable MVPDs; (d) national programming networks affiliated with noncable MVPDs distributed by cable systems; and (e) national programming networks affiliated with noncable MVPDs distributed by noncable distribution systems.

21. In the 1999 Competition Report, we again plan to report on recently launched and planned programming services. We request updated information on recent and planned programming launches. We seek ownership information for each new and planned programming services. We also ask commenters to provide the actual launch date for new services and the currently scheduled launch date for planned services? What types of programming will they offer? To what extent does the success of a new service depend on the tier or package of service on which it is placed by MVPDs?

22. We seek information on the various program options offered by each MVPD technology, including exclusive program offerings, the number of channels available, and the comparability of the program options and packages available with each technology. We request data on the extent to which there are programming networks affiliated with noncable MVPDs and whether such programming networks are available to competing MVPDs, including cable operators, on reasonable and nondiscriminatory terms. Are noncable MVPDs producing their own programming or securing exclusive rights to certain programming services? What are the costs of producing or securing such programming and have noncable MVPDs encountered any difficulty in doing so? We also request comment on whether there are certain programming services (i.e., "marquee" program services) or types of services (e.g., movie, sports, or news channels) that an MVPD needs to provide to subscribers in order to be successful? If so, which services or classes of services are needed and to what extent are there substitutable services?

23. The 1998 *Competition Report* included the results of a Commission study of cable operators' programming costs.⁴⁵ We would like to update the information provided in that study. We ask commenters to provide data and analysis regarding programming costs for cable and other MVPDs. To what extent have MVPDs' programming costs increased in the last year? What factors contributed to such increases? Are they related to any specific increases (e.g., increased cost of sports programming)? What effect have increased programming costs had on rates, especially on rates for cable service? Are increases in programming costs offset by increases in advertising revenues rather than by increases in subscriber rates?

⁴⁵ 1998 *Competition Report*, 13 FCC Rcd at 24457-24480 Appendix F.

24. In addition, we are interested in how MVPDs package their programming. To what extent do MVPDs offer or plan to offer consumers discrete programming choices (i.e., service on an "a la carte" or individual channel basis) rather than programming service packages (i.e., tiers of programming services). To what extent do MVPDs offer "mini-tiers," "lifeline" basic tiers, or digital tiers? How many cable systems and other MVPDs are technically equipped to offer customized programming packages at present? What would be required to allow operators to offer more customization than is currently available? What are the technical requirements that permit an MVPD to offer customized service? What are the economic, legal, or other impediments to offering programming services in this manner? Are MVPDs offering video and nonvideo services together (i.e., bundled services)? How are the combined services offered and priced? Does the ability to offer bundled services affect the relative competitive position of an MVPD? If so, how?

25. We further solicit information regarding local or regional channels. We ask commenters to identify such programming services by name and programming type and to provide current figures for the number of subscribers or market share of subscribers for: (a) independent regional programming networks; (b) regional programming networks distributed by cable systems; (c) regional cable programming networks distributed by noncable MVPDs; (d) regional programming networks affiliated with noncable MVPDs distributed by cable systems; and (e) regional programming networks affiliated with noncable MVPDs distributed by noncable distribution systems. To what extent do local cable operators or broadcasters own or have some involvement in providing local or regional news or sports channels? What technologies are used to distribute these channels? Are additional local and regional services being added due to increased system analog or digital capacity, or are they displacing other existing video services? How has regional clustering among MSOs contributed to the feasibility of regional MSO-affiliated programming services? Are local and regional programming services available to unaffiliated MVPDs?

26. Moreover, we seek information and comment regarding public, educational, and governmental ("PEG") access and leased access channels. We specifically request data on the number of channels being used for each of these purposes and the types of programming offered on such channels. We also seek information on the use of leased access channels, either on a part time or full time basis. Has the Commission's 1997 Order⁴⁶ amending the leased access rules had any impact on the development of leased access? Do these channels provide any competition to the programming channels under the control of the cable operator? In November 1998, the Commission adopted rules to implement Section 335 of the Communications Act concerning public interest programming obligations for DBS providers.⁴⁷ The rules require DBS licensees to reserve four percent of their channel capacity for "noncommercial programming of an educational or informational nature." Commenters are asked to provide information regarding the current or planned use of these channels.

⁴⁶*Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Leased Commercial Access*, CS Docket No. 96-60, Second Report and Order and Second Order on Reconsideration of the First Report and Order, 12 FCC Rcd 5267 (1997).

⁴⁷*See Implementation of Section 25 of the Cable Television and Consumer Protection Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, MM Docket No. 93-25, Report and Order, 13 FCC Rcd 23254 (1998).

27. The *1998 Competition Report* provided information on electronic programming guides ("EPGs") offered by cable operators and other MVPDs.⁴⁸ For this year's report, we request updated information on the extent to which MVPDs offer or plan to offer EPGs to their subscribers. We ask commenters to provide data on the number and different types of available electronic programming guides. We are interested in whether each EPG is nationally or locally produced and whether nationally distributed EPGs can be customized for local program offerings. We seek information regarding the ownership of nationally distributed EPGs, particularly with respect to their affiliation with MVPDs. To what extent do cable and other MVPD subscribers have access to EPGs that are unaffiliated with their MVPD provider? To what extent are EPGs that are affiliated with an MVPD available to competing MVPDs? In addition, to what extent are EPGs supported by advertising, subscriber fees, or a combination of both?

28. As in previous reports, we will continue to report on the effectiveness of our program access,⁴⁹ program carriage and channel occupancy rules that govern the relationships between cable operators and programming providers.⁵⁰ We request comment on each of these rules, especially whether the coverage of the program access rules is appropriate and on any other issues of concern to video programming providers or MVPDs relating to the availability and distribution of programming. In particular, we seek information on whether there have been any cases of MVPDs being denied programming when a satellite-delivered service becomes terrestrially-delivered, or being denied programming by non-vertically integrated programmers. In addition, to what extent are terrestrially-delivered programming services owned by, operated by, or affiliated with an MVPD (e.g., cable operator) available to other MVPDs (e.g., another cable operator or delivery technology)?

3. Technical Advances

29. In the *1998 Competition Report*, we addressed the deployment of digital technology and discussed recent activities to promote the commercial availability of the equipment used to access video programming and other services pursuant to the requirements of the 1996 Act.⁵¹ For this year's report, we seek updated information on system upgrades, particularly with respect to digital technology, and the time frames for completion of these upgrades. We request information regarding MSOs that have created digital tiers. How have cable systems increased their channel capacities by using digital tiers? What types of programming are available on digital tiers? Are these tiers used for new programming, digital clones of existing analog services, or digital hybrids modeled after an existing analog service with increased capabilities? For individual MSOs, we request data on the number and proportion of: (a) cable systems that provide digital tiers; (b) households for whom digital cable services are available; and (c) subscribers who actually choose to subscribe to digital services. Are upgrades being undertaken only in specific geographic areas or nationwide? Are upgrades being conducted mainly in response to competitive entry

⁴⁸ *1998 Competition Report*, 13 FCC Rcd at 24385-24386 ¶¶ 181-184.

⁴⁹ The program access rules also apply to OVS operators and common carriers in the same manner as they apply to cable operators. 47 C.F.R. §§ 76.1004, 76.1507.

⁵⁰ *1998 Competition Report*, 13 FCC Rcd at 24389-24390 ¶¶ 191-194; *1997 Competition Report*, 13 FCC Rcd at 1126-27 ¶ 169; *1996 Competition Report*, 12 FCC Rcd at 4432-39 ¶¶ 149-66; *1995 Competition Report*, 11 FCC Rcd at 2135-42 ¶¶ 157-72; *1994 Competition Report*, 9 FCC Rcd at 7520-22, 7528-36 ¶¶ 158-59, 173-98.

⁵¹ *1998 Competition Report*, 13 FCC Rcd at 24391-24394 ¶¶ 195-206.

in the area, or are there other factors that determine where and when a system will be upgraded? Are small and medium size MSOs upgrading deploying digital technology? How? We also are interested in information regarding new fiber plant. How much fiber plant have cable operators and other MVPDs added in the last year?

30. Similarly, we seek information on upgrades and the deployment of advanced technologies by MVPDs other than cable operators. We are interested in any investments by noncable MVPDs to enhance their facilities to provide digital programming and other advanced services. We are interested in data on the availability of such services to homes served by the MVPD and the number of homes actually subscribing to such services. We also request information on the feasibility of combining distribution technologies (e.g., DBS and SMATV) and data regarding MVPDs' current use of combined distribution technologies. In addition, we solicit data on estimated roll-out or launch dates for new technologies. Moreover, we are interested in what role, if any, the ability to provide advanced services plays in attracting subscribers to video programming services and contributing to the competitiveness of an MVPD? In addition, we request information on whether advanced services (i.e., two-way services) are offered separately or in combination with video programming by cable operators and other MVPDs? What is the competitive impact of offering advanced services in combination with video services?

31. Another important aspect of technological development is the deployment of set-top boxes, integrated receiver/decoders, or receivers that facilitate or differentiate MVPD service offering. In this year's report, we plan to update the information provided in the *1998 Competition Report* regarding the certification of set-top boxes and their availability through retail outlets. We ask commenters to provide information regarding the development of specifications for interoperable set-top boxes, including updated information on the progress of Cable Television Laboratories, Inc.'s OpenCable™ process. To what extent are set-top boxes currently available at retail outlets? What types of devices are available at retail and what are their capabilities? What plans are there for increasing the availability of set-top boxes in the next year or two?

32. In last year's report, we also observed that the cable industry has begun the widespread deployment of cable modems and that CableLabs was in the process of finalizing its Data Over Cable Service Interface Specification ("DOCSIS") intended to provide manufacturers with a set of standards that will enable the production of interoperable cable modems.⁵² We seek information regarding the availability DOCSIS compliant modems and the extent to which consumers are buying rather than leasing modems. We further request information on the number of homes capable of receiving cable modem service and how many subscribers have high-speed modems.

III. PROCEDURAL MATTERS

33. This *Notice* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before August 6, 1999, and reply comments on or before September 1, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

⁵²*Id.* at 24393-24394 ¶¶ 204-206.

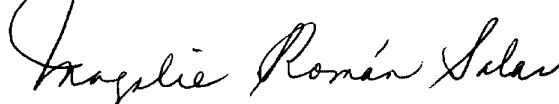
34. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

35. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554. The Cable Services Bureau contact for this proceeding is Marcia Glauber at (202) 418-7200, TTY (202) 418-7172, or at mglauber@fcc.gov.

36. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Marcia Glauber, 445 12th Street, S.W., Room 3-A738, Washington, D.C. 20554. Such a submission should be on 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case [CS Docket No. 99-230]), type of pleading (comment or reply comment), date of submission and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferable in a single electronic file. In addition commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

37. There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 C.F.R. § 1.1204(b)(1).

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary